IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22487 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGWATSINH DEVISINH VANAR & 1 - Petitioner(s)
Versus
BUDDHADEV DULALCHANDRA MANDA & 1 - Respondent(s)

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Appearance :
MR AY KOGJE for Petitioner(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR RAJESH K KANANI for Respondent(s) : 1,
MR JA ADESHRA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 05/07/2007

ORAL JUDGMENT

1. Bhagwatsinh Devisinh Vanar and Jagankumari Bhagwatsinh Vanar, petitioners – original defendant

Nos. 1 and 2, have filed this petition under Article 227 of the Constitution of India with a prayer that this Court may be pleased to quash and set aside the order dated 30.8.2006 passed by the learned Additional District Judge, Presiding Officer, Fast Track Court No. 13, Nadiad in Civil Miscellaneous Application No. 95 of 2006 as well as the order below application 5 in Civil Suit No. 40 of 2006 passed by the learned Principal Civil Judge, Mehmadavad on 26.7.2006. The petitioner by way of amendment prayed that this Court may be pleased to quash and set aside the order dated 7.10.2006 passed by the learned Principal Civil Judge, Mehmadabad, in R.C.S. No. 40 of 2006 below Exh. 40 which was already annexed at Annexure-M to the petition. This petition was filed on 11.10.2006. The matter was heard from time to time and this Court passed orders on 17.10.2006, 7.11.2006, 16.1.2007, 23.1.2007 and 8.3.2007. The matter was again placed for hearing. As the matter was partly heard on 4.7.2007, due to paucity of time the matter was not heard fully and therefore, the matter was kept for further hearing today. I have heard Mr. Adeshra, learned advocate for respondent

No. 2.

2. The facts giving rise to this petition are as under:

3. Gayatri Kelvani Mandal Trust, respondent No. 2, is a Public Trust registered under the provisions of the Bombay Public Trust Act. Respondent No. 1, namely, Buddhadev Dulalchandra Mandal, is working as Campus Director of the Institution run by respondent No. 2 trust. Petitioner No. 2 Jagankumari Bhagwatsinh Vanar is wife of petitioner No. 1 Bhagwatsinh Devisinh Vanar and is trustee of respondent No. 2 trust. The brother of petitioner No. 1 Deepsinh Vanar is also trustee of respondent No. 2 Trust and petitioners were instrumental in initiating and starting Physical College of Education at Mahemdavad in the year 1999.

4. The learned advocate for respondent No. 2, has submitted that respondent No. 2 Trust is running the educational institutions, namely, (1) The Physical College of Education, (2) Degree College of

Physical Education and (3) B.P.E. And Diploma in Yoga at Mahemdabad. That there is a girls hostel run by respondent No. 2 Trust and the said girls hostel is running since 1994 and The Physical College of Education is running since 1999. He has further submitted that Education Department, Government of Gujarat, has also granted recognition to the Physical College of Education on 19.5.1999. Respondent No. 1 is carrying on the work of Campus Director of all the three institutions run by respondent No. 2 trust.

5. As a part of duty of respondent No. 1 as Campus Director he is required to stay in the College Campus round the clock and respondent No. 2 has given two rooms in the premises of Physical College of Education to respondent No. 1, where respondent No. 1 was staying with his family consisting of himself, his wife and two children along with all his household belongings. It is the case of the respondent that during summer vacation on 28.5.2006 when the respondent was not staying in the premises in question the petitioners took law in their hands illegally and in a highhanded manner broke open the

lock on the main gate of the premises of the Physical College of Education at Mahemdabad and the premises of the girls hostel and applied their lock and posted their security guards. That the persons hired by the petitioners did not permit anyone to enter the premises in question.

6. Being aggrieved by and dissatisfied with the said action, respondent No. 2 trust filed Special Civil Suit No. 26 of 2006 in the Court of Senior Civil Judge, Nadiad for permanent injunction restraining the petitioners from interfering or obstructing the trustees and girl students from using the said premises. Respondent No. 2 trust had also filed application Exh. 5 for interim injunction. The petitioner had filed an application Exh. 14 for counter injunction.

7. The learned Senior Civil Judge, Nadiad, vide order dated 18.7.2006 was pleased to dismiss application Exh. 5 and was pleased to grant application Exh. 14 filed by the petitioners.

8. Being aggrieved by and dissatisfied with the said order, respondent No. 2 filed Civil Miscellaneous Appeal No. 93 of 2006 and Civil Misc. Appeal No. 94 of 2006 before the District Court, Nadiad, challenging the orders passed below applications Exh. 5 and Exh. 14 respectively.

9. The learned District Judge, Nadiad, by his judgement and order dated 7.9.2006 was pleased to allow both the Civil Miscellaneous Appeal Nos. 93 of 2006 and 94 of 2006.

10. Being aggrieved by and dissatisfied with the said order, the petitioners have filed Special Civil Application Nos. 19665 of 2006 and 19666 of 2006. When the aforesaid matters were placed for hearing before this Court, this Court (Coram: D.A. Mehta, J) by order dated 15.9.2006 summarily rejected the said petitions on the ground that this Court did not find any error in the order of the learned Judge. Mr. Adeshara, learned advocate for respondent No. 2 has produced a copy of the said order and the said order is taken on record.

11. In view of the aforesaid facts and circumstances of the case, the learned advocate has submitted that so far as the entire building of The Physical College of Education at Mahemdabad is concerned, respondent No. 2 trust had filed Special Civil Suit No. 29 of 2006 in the Court of Senior Civil Judge, Nadiad for permanent injunction restraining the petitioners herein from interfering or obstructing the trustees, students, and Campus Director from using the said premises. It is pertinent to note that the subject matter of the said Special Civil Suit No. 29 of 2006 includes the two rooms occupied by respondent No. 1 – Campus Director in the premises of Physical College of Education at Mahemdabad. That respondent No. 2 trust had also filed application Exh. 5 for interim injunction and the petitioner had filed an application Exh. 19 for counter injunction.

12 The learned Second Additional Senior Civil Judge, Nadiad, passed judgement and order dated 6.12.2006 in Special Civil Suit No. 29 of 2006 was

pleased to reject the application Exh. 19 for counter injunction filed by the petitioners and so far as application Exh. 5 filed by respondent No. 2 trust was allowed. The order of the learned Judge is also produced by the respondents along with their affidavit.

13. Being aggrieved by and dissatisfied with the said order, the petitioners have filed Miscellaneous Civil Appeal Nos. 128 of 2006 and 129 of 2006 before the District Court, Nadiad. Both these appeals are pending. Thus, since the subject matter of this petition viz. two rooms occupied by respondent No. 1 – Campus Director in the premises of Physical College of Education are included in the above Suit proceedings, the present proceedings would not survive.

14. The learned counsel for respondent No. 1 further submitted that since respondent No. 1 – Campus Director was illegally dispossessed by the petitioners without resorting to the process of law, he was constrained to file Regular Civil Suit No. 40

of 2006 before the Principal Civil Judge, Mahemdabad. Along with the suit respondent No. 1 had filed an application for interim injunction Exh. 5.

15. The learned advocate further submitted that after filing of the suit i.e. Regular Civil Suit No. 40 of 2006, a panchnama was prepared by the Court Commissioner as per order of the Trial Court. The panchnama shows possession of respondent No. 1 and it also shows that the belongings of respondent No. 1 were lying in the said two rooms. Thus, it is conclusively proved that prior to taking possession of the two rooms by the petitioners, respondent No. 1 was in possession of the two rooms legally. That the photographs of twin children of respondent No. 1 and his wife taken on their birthday in the same premises on 2.10.2005, clearly establish the possession of the two rooms with respondent No. 1.

16. The learned Principal Civil Judge, Mahemdabad, by his order dated 26.7.2006 was pleased to grant interim injunction in favour of respondent No. 1 in the said Suit.

17. Being aggrieved and dissatisfied with the said order, the petitioners – original defendants had filed Civil Misc. Appeal No. 95 of 2006 before the District Court, Nadiad, challenging the order dated 26.7.2006 passed below application Exh. 5 in Regular Civil Suit No. 40 of 2006.

18. The learned District Judge, Nadiad, by his order dated 30.8.2006 was pleased to dismiss Civil Miscellaneous Appeal No. 95 of 2006.

19. Being aggrieved and dissatisfied with the said order, the petitioners have filed the present petition under Article 227 of the Constitution of India.

20. When the matter was placed for hearing before this Court Mr. Kogje for the petitioner has made the following submissions.

20A He stated that all the orders of the trial Court are contrary to and inconsistent with the

evidence on record. He has stated that the trial Court has not treated the principle regarding granting of injunction particularly prima face case, balance of convenience and irreparable injury in this behalf. The learned Judge has not properly considered the documentary evidence on record.

21 The learned advocate for respondent No. 2 has pointed out that earlier this matter was heard and this Court was pleased to dispose of the same. However, Mr. Kogje requested that he may be heard and ultimately the Court decided to hear the matter.

21A When the matter was listed for hearing on 8.3.2007 Mr. Kogje, learned advocate argued the matter and this Court passed a short order. However, Mr. Adeshra, learned advocate for respondent No. 2 has pointed out that on 8.3.2007 he filed sick note and therefore he could not remain present and hence the observations made by this Court in the order passed on 8.3.2007 are based only on the submissions of Mr. Kogje, learned advocate for the petitioner and Mr. Adeshra, learned advocate for respondent No. 2

has not been called upon to reply to the submissions made by Mr. Kogje, learned advocate for the petitioner and when the learned advocate filed sick note on 8.3.2007, it is not proper for this Court to pass any order on that day. In view of the same, the order dated 8.3.2007 is recalled as it has been passed without hearing Mr. Adeshra, learned advocate for respondent No. 2.

22. The learned advocate for the respondents submitted that petitioner No. 2 is trustee of respondent No. 2 and she is wife of petitioner No. 1. That brother of petitioner No. 1 Deepsinh Vanar is also a trustee of respondent No. 2 Trust. The petitioners were themselves instrumental in starting The Physical College of Education. It is their case that possession of the premises was given by Luna Pump Pvt. Ltd. who were the owner of the property and Luna Pump Pvt. Ltd. Has not raised any dispute about the use of their premises for The Physical College of Education. The learned advocate submitted that respondent No. 2 Trust was maintaining the property right from 1999 to 28.5.2006. Respondent No. 2 is

carrying on the legal activities without any obstruction and they are paying necessary property tax.

23. It was further submitted that the subject matter of the present petition is two rooms occupied by respondent No. 1 in the premises of Physical College of Education.

24. Meanwhile, the petitioners also filed Civil Miscellaneous Application No. 72 of 2006 for consolidation of Special Civil Suit No. 26 of 2006 filed before Senior Civil Judge, Nadiad; Special Civil Suit No. 29 of 2006 filed before the Senior Civil Judge, Nadiad and Regular Civil Suit No. 40 of 2006 filed before the Principal Civil Judge, Mahemdabad. The learned District Judge by his order dated 28.7.2006 was pleased to reject the said Civil Miscellaneous Application No. 72 of 2006. The said order has not been challenged by the petitioners and the said order has become final.

25. The learned Principal Civil Judge,

Mahemdabad by his order dated 7.10.2006 was pleased to grant application of respondent No. 1 at Exh. 39 for preparing a panchnama and application Exh. 40 for removing the seal applied by the earlier Court Commissioner. The learned Judge by his order dated 2.11.2006 was pleased to reject application Exh. 65 filed by the petitioners for stay of the order dated 7.10.2006.

26. The petitioners have filed this petition on 11.10.2006. Respondent No. 2 filed a detailed affidavit in reply on 10.11.2006. Respondent No. 2 also filed further affidavit dated 18.1.2007 and produced certain documents for which I have made reference earlier.

27. After going through the entire evidence on record, two facts emerge, namely: (1) the petition raises disputed question of fact and (2) several orders have been passed by the Court below and those orders are challenged and the appeals are pending before the learned Judge. The learned advocate for the petitioner has not been able to show any error of

law or of even jurisdiction in passing of the orders by the Court below.

27A Mr. Adeshra, learned advocate for respondent No. 2 relies on the judgement of the Hon'ble Supreme Court in the case of SURYA DEV RAI VS. RAM CHANDER RAI AND OTHERS reported in 2003(6) SCC 675 particularly paragraph Nos. 37, 38 and 39 wherein the Hon'ble Supreme Court has held that under Article 227 of the Constitution if there is any error of jurisdiction or error of law then only the Court can deal with the matter. Here the orders are passed and all the orders are subject matter of appeal proceedings before the respective Courts. In view of the same, this Court is of the view that this is not a fit case where this Court should exercise its extraordinary jurisdiction under Article 227 of the Constitution of India. He has stated that, as per the said judgement, under Article 227 of the Constitution of India, this Court has a very limited jurisdiction.

28. However, without deciding the finality of

the matter, if the following orders are passed, the same will be in the interest of justice.

29. In view of the aforesaid submissions, this petition is rejected on the simple ground that the appeals are pending before the learned District Judge, Nadiad. However, while rejecting the petition this Court requests the learned District Judge to hear and dispose of the respective appeals filed by the respective parties in accordance with law without being influenced by the order passed by this Court. The learned advocates for the parties state that the parties will co-operate with hearing of the matters. This Court hopes and trusts that the learned Judge will hear and decide the matters as expeditiously as possible because the matter pertains to educational institution.

(K.M. MEHTA, J)

(pkn)